

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL JOHN MODENA,

Plaintiff,

Case No. 1:09-cv-534

v.

Honorable Paul L. Maloney

UNITED STATES DEPARTMENT
OF JUSTICE et al.,

Defendants.

JUDGMENT

This is a civil rights action brought by a federal prisoner alleging a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964. By order entered July 20, 2009 (docket #5), the Court granted Plaintiff's request to proceed *in forma pauperis* and required Plaintiff to pay an initial partial filing fee of \$16.21 pursuant to 28 U.S.C. § 1915(b)(1). The Court ordered that the initial partial filing fee be paid within thirty days, and warned Plaintiff that his case would be dismissed without prejudice should he fail to pay. The Court also warned Plaintiff that he would remain liable for the filing fee.

At the time the order was issued, Plaintiff was housed at the Newaygo County Jail. The copy of the order mailed to him at that address was returned to the Court on July 27, 2009, and the order was immediately remailed to Plaintiff's new address at the Federal Detention Center-Seatac in Seattle, Washington. More than thirty days have now elapsed since July 27, 2009, and Plaintiff has not paid the fee. Plaintiff has, however, filed a "Notice of Prejudicial Error," in which he alleges that the Court miscalculated his total deposits over the six months preceding filing to be

\$325.16 rather than \$324.16, resulting in an initial partial filing fee that was \$.20 more than it should have been. Plaintiff's objection is meritless. The order to proceed *in forma pauperis* calculated a total amount of deposits of \$324.16, the amount of deposits admitted by Plaintiff. Moreover, Plaintiff's remaining objection to the filing fee is frivolous, as Plaintiff is not exempted from 28 U.S.C. § 1915(b)(1) by declarations that he is a "natural man" and a "sovereign."

Also before the Court is Plaintiff's motion to hold the complaint in abeyance until some unspecified time when he is no longer in a federal prison facility located "half-way to Indochina." (Docket #8.) In light of the Court's dismissal of the complaint without prejudice for failure to pay the initial partial filing fee, the motion to hold the complaint in abeyance is moot.

Because Plaintiff has failed to comply with the Court's July 20, 2009 order, dismissal of this action without prejudice is appropriate. Therefore:

IT IS ORDERED that the captioned case be and hereby is **DISMISSED** without prejudice. Plaintiff shall remain liable for the \$350.00 civil action filing fee.

IT IS FURTHER ORDERED that Plaintiff's motion to hold the complaint in abeyance (docket #8) is **DENIED** as moot.

Dated: September 4, 2009

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge